Filed 5/28/20 P. v. Superior Court (Rodriguez) CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF STANISLAUS COUNTY,

Respondent;

JESUS MANUEL RODRIGUEZ,

Real Party in Interest.

F079155

(Super. Ct. No. 506846)

OPINION

ORIGINAL PROCEEDINGS: petition for writ of mandate. Ruben A. Villalobos, Judge.

Birgit Fladager, District Attorney and John R. Mayne, Deputy District Attorney, for Petitioner.

No appearance for Respondent.

Robert J. Winston for Real Party in Interest.

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SEE DISSENTING OPINION

INTRODUCTION

Proposition 57, The Public Safety and Rehabilitation Act of 2016 (Proposition 57), changed how minors were treated in the criminal justice system. It eliminated a district attorney's ability to file charges directly in criminal court against minors who were 14 years of age or older at the time of their alleged crimes. (*People v. Superior Court* (*T.D.*) (2019) 38 Cal.App.5th 360, 364–365 (*T.D.*), review granted Nov. 26, 2019, S257980; *People v. Superior Court* (*Alexander C.*) (2019) 34 Cal.App.5th 994, 997 (*Alexander C.*).) Under Proposition 57, a district attorney was required to obtain juvenile court approval before prosecuting minors in criminal court. (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 997.)

In 2018, however, the Legislature enacted Senate Bill No. 1391 (2017–2018 Reg. Sess., hereinafter Senate Bill 1391). Senate Bill 1391 prohibits the transfer of virtually all 14- and 15-year-old offenders to adult criminal court.[1] (Welf. & Inst. Code, § 707, subd. (a)(1), (2).)[2] In the present petition, the Stanislaus County District Attorney argues Senate Bill 1391 is constitutionally invalid. According to the district attorney, Senate Bill 1391 is inconsistent with, and does not further, the intent of Proposition 57. We disagree and deny the petition for writ of mandate.

BACKGROUND AND PROCEDURAL HISTORY

In 2012, real party in interest Jesus Manuel Rodriguez was tried as an adult and he was convicted of murder, conspiracy to commit murder, and participation in a criminal

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[1] Senate Bill 1391 provides a rare exception. A 14- or 15-year-old juvenile offender may still be tried in adult court when the offender is "not apprehended prior to the end of the juvenile court jurisdiction." (Welf. & Inst. Code, § 707, subd. (a)(2).)

[2] All future statutory references are to the Welfare and Institutions Code unless otherwise noted.

street gang.[3] Rodriguez was sentenced to prison for 50 years to life. These crimes occurred in 2004 when Rodriguez was 15 years old. (*Rodriguez, supra,* 4 Cal.5th at pp. 1125–1127.)

In an unpublished opinion, this court affirmed Rodriguez's judgment. (*People v. Rodriguez* (Feb. 17, 2015, F065807).) Rodriguez appealed. On May 17, 2018, the California Supreme Court remanded Rodriguez's case back to this court. We were instructed to remand to the trial court to provide the parties with an opportunity to supplement the record with information relevant to Rodriguez's youth offender parole hearing. The lower court was also to consider the applicability of a firearm enhancement. (*Rodriguez, supra,* 4 Cal.5th at pp. 1132–1133.)

After this matter returned to us, Rodriguez filed supplemental briefing regarding the impact of Proposition 57. He asserted he was entitled to a transfer hearing for a possible juvenile disposition.

On September 27, 2018, this court issued an unpublished opinion which conditionally reversed Rodriguez's convictions and sentence. We remanded the matter to the juvenile court with directions to conduct a juvenile transfer hearing. (*People v. Rodriguez* (Sept. 27, 2018, F065807).) The remittitur issued on December 13, 2018.

In January 2019, Rodriguez filed a motion in the superior court raising Senate Bill 1391. Rodriguez asserted he could no longer be adjudicated as an adult, and he sought a juvenile disposition. The prosecutor filed written opposition.

On April 19, 2019, the juvenile division of the superior court determined Senate Bill 1391 was constitutional. The lower court rejected the prosecution's argument that the law of the case doctrine required a transfer hearing. A juvenile disposition hearing was set.

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[3] Rodriguez was tried with a codefendant, Edgar Octavio Barajas. (*People v. Rodriguez* (2018) 4 Cal.5th 1123, 1125–1126 (*Rodriguez*).) Barajas is not part of the present petition.

On April 24, 2019, the People of the State of California filed the present petition for writ of mandate. The district attorney asserted the lower court erred in finding Senate Bill 1391 constitutional. The district attorney asked that we vacate the lower court's order setting a dispositional hearing and, instead, direct the lower court to conduct the transfer hearing which we had previously ordered. The petition requested an immediate stay.

The following day, this court issued an order to show cause, and we ordered the proceedings in the lower court stayed. A briefing schedule was set.

On May 6, 2019, Rodriguez filed a return. In general, Rodriguez contended the lower court did not err in finding Senate Bill 1391 constitutional. Although it had the option, the district attorney did not file a reply.

We address the parties' arguments.

DISCUSSION

I. Senate Bill 1391 Constitutionally Amended Proposition 57.

The district attorney asserts that, following Proposition 57, minors such as Rodriguez were neither expected nor intended to be free from adult consequences for their violent acts. The district attorney contends Senate Bill 1391 is in direct opposition to Proposition 57, and it represents an unconstitutional amendment.

After the present petition was filed, various opinions from different appellate districts in the state have analyzed whether Senate Bill 1391 unconstitutionally amended Proposition 57. At least one opinion holds Senate Bill 1391 is unconstitutional to the extent it precludes the possibility of adult prosecution of an alleged 15-year-old murderer. (*O.G. v. Superior Court* (2019) 40 Cal.App.5th 626, 626–628 (2d Dist., Div. 6) (*O.G.*), review granted Nov. 26, 2019, S259011.) We review *O.G.* in greater detail later in this opinion.

On the other hand, at least seven opinions, including two from this court, have held Senate Bill 1391 constitutionally amended Proposition 57. (See *B.M. v. Superior Court* (2019) 40 Cal.App.5th 742, 746–747 (4th Dist., Div. 2) (*B.M.*), review granted Jan. 2, 2020, S259030; *Alexander C.*, *supra*, 34 Cal.App.5th at p. 997 (1st Dist., Div. 4); *People v. Superior Court* (*K.L.*) (2019) 36 Cal.App.5th 529, 540–541 (3d Dist.) (*K.L.*); *T.D.*, *supra*, 38 Cal.App.5th at p. 365 (5th Dist.), review granted; *People v. Superior Court* (*I.R.*) (2019) 38 Cal.App.5th 383, 386 (5th Dist.) (*I.R.*), review granted Nov. 26, 2019, S257773; *People v. Superior Court* (*S.L.*) (2019) 40 Cal.App.5th 114, 117 (6th Dist.) (*S.L.*), review granted Nov. 26, 2019, S258432; *Narith S. v. Superior Court* (2019) 42 Cal.App.5th 1131, 1133 (2d Dist., Div. 3) (*Narith S.*), review granted Feb. 19, 2020, S260090.)

The California Supreme Court has taken this issue under review. We agree with the seven opinions which hold Senate Bill 1391 constitutionally amended Proposition 57.

A. Standard of review.

Because this issue involves a question of law, we review the lower court's decision independently. (*T.D.*, *supra*, 38 Cal.App.5th at p. 371, review granted.)

B. Analysis.

Before addressing the merits of the petition, we provide a history of Proposition 57 and Senate Bill 1391. We then provide a summary of the law applicable to amending voter initiatives, such as Proposition 57.

1. A history of Proposition 57 and Senate Bill 1391.

Historically, a minor could be tried in adult criminal court only after a judicial determination, before jeopardy attached, that he or she was unfit to be dealt with under juvenile court law. (*People v. Superior Court* (*Lara*) (2018) 4 Cal.5th 299, 305 (*Lara*).) However, this historical rule was altered in 1999 and 2000 by amendments to former

sections 602 and 707.[4] (*Lara*, *supra*, at p. 305.) Under the changes, prosecutors were permitted, and sometimes required, to file charges against a juvenile directly in criminal court, where the juvenile would be treated as an adult. (*Ibid.*)

"Proposition 57 changed the procedure again, and largely returned California to the historical rule." (*Lara*, *supra*, 4 Cal.5th at p. 305.) In part, Proposition 57 amended the Welfare and Institutions Code to prohibit prosecutors from filing criminal charges against minors directly in adult court. (*Lara*, *supra*, at p. 305; see also *K.L.*, *supra*, 36 Cal.App.5th at pp. 536–538 [summarizing historical development of relevant law preceding Senate Bill 1391].) Under Proposition 57, certain categories of minors can still be tried in criminal court. However, a juvenile court judge must first conduct a transfer hearing to consider various factors such as the minor's maturity, degree of criminal sophistication, prior delinquent history, and whether the minor can be rehabilitated. (*Lara*, *supra*, 4 Cal.5th at pp. 305–306.)

Proposition 57 permitted district attorneys to request the juvenile court to transfer minors 16 years or older to adult court for any felony offense. (Former § 707, subd. (a)(1).) However, regarding 14 and 15 year olds, Proposition 57 limited potential transfer to those accused of specified serious or violent offenses, including murder. (Former § 707, subds. (a)(1), (b)(1).)

Senate Bill 1391 went into effect on January 1, 2019. (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 998.) In general, it largely eliminated a district attorney's ability to

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[4] "Proposition 21, titled the Gang Violence and Juvenile Crime Prevention Act of 1998 and approved by the voters at the March 7, 2000, Primary Election (Proposition 21), made a number of changes to laws applicable to minors accused of committing criminal offenses." (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 544–545.) Proposition 21 permitted prosecutors to file specified charges against minors 14 years of age and older directly in adult criminal court. (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at p. 545.)

seek transfers of 14 and 15 year olds from juvenile court to adult criminal court.[5] (§ 707, subd. (a)(1), (2).) Thus, the issue before us is whether Senate Bill 1391 unconstitutionally amended Proposition 57, which was a voter initiative.

2. How the Legislature may amend an initiative.

The Legislature has two ways to amend an initiative measure. (*People v. Superior Court* (*Pearson*) (2010) 48 Cal.4th 564, 568 (*Pearson*).) First, it may do so with subsequent voter approval. In the alternative, and which is relevant here, the initiative itself may permit amendment without the electors' approval. (Cal. Const., art. II, § 10, subd. (c); *Pearson*, *supra*, 48 Cal.4th at p. 568; *Alexander C.*, *supra*, 34 Cal.App.5th at p. 999.)

Proposition 57 expressly permitted amendment by the Legislature. However, Proposition 57 required any amendment to be "consistent with and further" its intent. (Voter Information Guide, Gen. Elect. (Nov. 8, 2016) text of Prop. 57, § 5, p. 145.) This language from Proposition 57 is the foundation of the present dispute.

As an initial matter, we note Proposition 57's amendment language can be read in two different ways. First, under one interpretation, Proposition 57 could allow an amendment that is *consistent with its express language* and which furthers its intent. In the alternative, this language could be read as allowing an amendment so long as it is *consistent with its intent* and which furthers its intent.

Opinions upholding Senate Bill 1391 have determined this language from Proposition 57 should be read as permitting an amendment that is consistent with, and furthers, the intent of Proposition 57. (*Narith S.*, *supra*, 42 Cal.App.5th at p. 1141, review granted; *T.D.*, *supra*, 38 Cal.App.5th at p. 372, review granted.) We agree with this approach. As noted in *Narith S.*, "limiting authorized amendments to those

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[5] Senate Bill 1391 provides a rare exception. A 14- or 15-year-old juvenile offender may still be tried in adult court when the offender is "not apprehended prior to the end of the juvenile court jurisdiction." (§ 707, subd. (a)(2).)

consistent with the express language of [Proposition 57] would appear to preclude *any* amendment that deletes or repeals any portion of [Proposition 57], no matter how consistent such action might be with the purpose of [Proposition 57] itself." (*Narith S.*, *supra*, 42 Cal.App.5th at p. 1141, review granted.)

3. Senate Bill 1391 is consistent with and furthers the intent of Proposition 57.

The parties disagree whether or not Senate Bill 1391 is "consistent with and furthers" the intent of Proposition 57. In its voter information, Proposition 57 listed the following five purposes and intents:

"1. Protect and enhance public safety[;]"

"2. Save money by reducing wasteful spending on prisons[;]"

"3. Prevent federal courts from indiscriminately releasing prisoners[;]"

"4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles[;]" and

"5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court." (Voter Information Guide, Gen. Elec., *supra*, text of Prop. 57, § 2, p. 141.)

In conducting our analysis, we are to uphold the validity of a legislative amendment if, by any reasonable construction, it can be said the amending statute furthers the purposes of the initiative. (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1256.) We must presume the Legislature acted in a constitutionally valid manner and within its authority. (*Narith S.*, *supra*, 42 Cal.App.5th at p. 1140, review granted; *T.D.*, *supra*, 38 Cal.App.5th at pp. 370–371, review granted; *Alexander C.*, *supra*, 34 Cal.App.5th at pp. 999–1000.) On the other hand, we must also "strictly construe" the limitation which Proposition 57 placed on its own amendment. (*Amwest Surety Ins. Co. v. Wilson*, *supra*, 11 Cal.4th at p. 1255.) Ultimately, we must give effect to the voter's intent. (*Id.* at pp. 1255–1256.)

We determine that Senate Bill 1391 is consistent with, and furthers, the purposes and intents listed in Proposition 57. First, Senate Bill 1391 advances juvenile rehabilitation. Almost all minors who commit crimes at the age of 14 or 15 will be processed through the juvenile system. This will ensure those young offenders will receive treatment, counseling, and education. (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1000.)

Second, and most importantly, Senate Bill 1391 maintains the requirement that no minor may be prosecuted in criminal court unless a juvenile court first determines the minor is unfit for the juvenile system. (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1001.) Senate Bill 1391 certainly narrows the class of minors who are subject to review by a juvenile court for potential transfer to adult court. However, it does not contradict Proposition 57. To the contrary, Proposition 57 never stated or expressed an intent to grant prosecutors the right to try 14 and 15 year olds in criminal court. (*T.D.*, *supra*, 38 Cal.App.5th at p. 373, review granted.) Indeed, Proposition 57 did not set a minimum age for which juveniles could be tried as adults. (*T.D.*, *supra*, at p. 373, review granted.) Instead, by its own language, Proposition 57 applies to "[c]ertain categories of minors." (*Lara*, *supra*, 4 Cal.5th at p. 305.) Senate Bill 1391 merely narrowed that category. Under Senate Bill 1391, when a transfer decision must be made, it is still a judge and not a prosecutor who must render that decision. (*Alexander C.*, *supra*, at p. 1001.)

Finally, the remaining three paragraphs in Proposition 57 regarding its purpose and intent do not directly address the prosecution of minors. (Voter Information Guide, Gen. Elec., *supra*, text of Prop. 57, § 2, p. 141.) Senate Bill 1391 nevertheless is consistent with them. That is, this amendment will continue to protect and enhance safety, it will save money, and it will continue to prevent federal courts from indiscriminately releasing prisoners. As such, the remaining purposes and intents from Proposition 57 are satisfied with the amendment occurring from Senate Bill 1391. (*Alexander C.*, *supra*, 34 Cal.App.5th at pp. 1001–1002; *Narith S.*, *supra*, 42 Cal.App.5th

at p. 1142, review granted; *T.D.*, *supra*, 38 Cal.App.5th at p. 374, review granted.) In short, Senate Bill 1391 constitutionally amended Proposition 57.[6]

4. We decline to follow *O.G.*

We address *O.G.*, *supra*, 40 Cal.App.5th 626, review granted, which held Senate Bill 1391 unconstitutionally amended Proposition 57. According to the *O.G.* court, the key question is " 'whether [Senate Bill 1391] prohibits what [Proposition 57] authorizes, or authorizes what the initiative prohibits.' " (*O.G.*, *supra*, 40 Cal.App.5th at p. 630, review granted, quoting *Pearson*, *supra*, 48 Cal.4th at p. 571.) The court concluded Proposition 57 authorizes the possibility of treating a 15-year-old alleged murderer as an adult, and Senate Bill 1391 precludes that possibility. (*O.G.*, *supra*, 40 Cal.App.5th at p. 630, review granted.) The court also determined Senate Bill 1391 went against Proposition 57's intent to protect and enhance public safety because a murderer could receive juvenile treatment. (*O.G.*, *supra*, 40 Cal.App.5th at p. 630, review granted.) The appellate court believed it was better for a superior court judge to determine if a qualifying minor should be adjudicated in adult court. (*Ibid.*) Accordingly, the court held Senate Bill 1391 represented an unconstitutional substantive change in the law. (*O.G.*, *supra*, 40 Cal.App.5th at p. 630, review granted.)

We disagree with *O.G.*'s analysis. Proposition 57 stated it "shall be broadly construed to accomplish its purposes." (Voter Information Guide, Gen. Elec., *supra*, text of Prop. 57, § 5, p. 145.) Its "overriding purpose was to channel more juvenile offenders into the juvenile justice system and to have a juvenile court judge make the transfer decision if one was to be made, not to set in stone the age parameters for such a

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6 The district attorney notes Proposition 57 could be nullified if Senate Bill 1391 is constitutional. According to the district attorney, the Legislature could later prohibit the transfer of any juveniles to adult court. We decline, however, to speculate on what the Legislature might do in the future, and such speculation does not invalidate Senate Bill 1391. (*T.D.*, *supra*, 38 Cal.App.5th at p. 378, review granted.)

determination." (*T.D.*, *supra*, 38 Cal.App.5th at p. 374, review granted.) As noted before, Senate Bill 1391 maintains the stated requirement that no minor may be prosecuted in criminal court unless a juvenile court first determines the minor is unfit for the juvenile system. (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1001.) "Proposition 57 did not expand, nor are we convinced it was intended to establish or solidify, the age at which minors can be tried as adults." (*T.D.*, *supra*, 38 Cal.App.5th at p. 376, review granted.)

Further, Proposition 57 emphasized rehabilitation. (*Narith S.*, *supra*, 42 Cal.App.5th at p. 1142, review granted.) The voter information guide to Proposition 57 pointed out that "the more inmates are rehabilitated, the less likely they are to re-offend … [and] minors who remain under juvenile court supervision are less likely to commit new crimes." (Voter Information Guide, *supra*, argument in favor of Prop. 57 at p. 58.) Contrary to the concerns expressed in *O.G.*, Senate Bill 1391 does not reduce public safety. Instead, "rehabilitating juvenile offenders so they do not continue to commit crimes benefits public safety." (*Narith S.*, *supra*, 42 Cal.App.5th at p. 1142, review granted.) Moreover, "[r]educing the inmate population in adult prisons by keeping juveniles in the juvenile justice system promotes public safety by eliminating any need for federal judges to order inmates released before their parole dates." (*Ibid.*)

Finally, the Legislature declared that Senate Bill 1391 was " 'consistent with and furthers the intent of Proposition 57.' [Citation.]" (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 998.) Legislative findings are not binding on a reviewing court, but they are given great weight and will be upheld unless they are unreasonable and arbitrary.[7] (*T.D.*,

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[7] The *O.G.* court concluded no weight should be given to the Legislature's declaration that Senate Bill 1391 is consistent with and furthers the intent of Proposition 57. (*O.G.*, *supra*, 40 Cal.App.5th at p. 630, review granted.) According to *O.G.*, "[t]his is a self-serving statement designed to bolster the attempt to overrule the electorate." (*Ibid.*)

supra, 38 Cal.App.5th at p. 370, review granted.) We cannot declare it was unreasonable or arbitrary for the Legislature to conclude that Senate Bill 1391 promotes juvenile rehabilitation, while protecting and enhancing public safety, by ensuring virtually all 14 and 15 year olds who commit crimes (and who are the youngest teens in the justice system) will be processed through the juvenile justice system. (*T.D.*, *supra*, 38 Cal.App.5th at p. 373, review granted.) As such, and for all of the reasons stated above, we decline to adopt *O.G.*'s holding that Senate Bill 1391 unconstitutionally amended Proposition 57.

5. The "law of the case" and "collateral estoppel" doctrines are inapplicable.

The district attorney notes this court previously ordered the superior court to conduct a transfer hearing pursuant to Proposition 57. Based on our previous order, the district attorney argues Rodriguez should be collaterally estopped from "relitigating" whether a transfer hearing is required. The district attorney contends two doctrines should be applied: (1) the law of the case or (2) res judicata/collateral estoppel. We disagree that these doctrines are applicable.

"Res judicata gives conclusive effect to a final judgment on the merits in subsequent litigation of the same controversy. Collateral estoppel bars relitigation of an issue decided in a previous proceeding in a different cause of action if '(1) the issue necessarily decided at the previous proceeding is identical to the one which is sought to be relitigated; and (2) the previous proceeding resulted in a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the prior proceeding.' [Citations.]" (*People v. Davis* (1995) 10 Cal.4th 463, 514–515, fn. 10.)

Under the law of the case doctrine, when a court decides upon a rule of law, that decision should continue to control the same issues in subsequent stages of the same case. (*Arizona v. California* (1983) 460 U.S. 605, 618.) This doctrine is applied even when the

prior decision appears to be in error. (*People v. Whitt* (1990) 51 Cal.3d 620, 638.) However, this doctrine has limitations. It is not used when significant changes in circumstances have occurred, or when it would provide an unjust result. (*Id.* at pp. 638–639; *People v. Martinez* (2003) 31 Cal.4th 673, 683; see also *People v. Durbin* (1966) 64 Cal.2d 474, 479, fn. 3 [declining to use law of the case doctrine to overcome a statutory amendment].)

Here, the requirements for res judicata/collateral estoppel are not met. Our previous opinion did not result in a final judgment on the merits. To the contrary, appellant's convictions and sentence were conditionally vacated. We directed the lower court to conduct a transfer hearing pursuant to Proposition 57. In the interim, however, the Legislature validly amended Proposition 57 with Senate Bill 1391. Under current law, Rodriguez is no longer eligible for a transfer hearing. Under these circumstances, it would be unjust to direct the lower court to still conduct one. Consequently, we decline to apply either the law of the case doctrine or res judicata/collateral estoppel in this situation.

6. The prior version of Proposition 57.

The district attorney notes that, in a prior version of Proposition 57 (one which did not go before the electorate), 16 years was the minimum age at which juveniles could be transferred to adult court. (See *Brown v. Superior Court* (2016) 63 Cal.4th 335, 340.) The district attorney argues this language, which was deleted from the version upon which the electorate voted, establishes that the drafters of Proposition 57 were well aware of arguments for and against the transfer of 14 and 15 year olds. The district attorney contends the proponents of Proposition 57 intentionally omitted identical language which was enacted in Senate Bill 1391. As a result, the district attorney maintains Senate Bill 1391 is not consistent with and does not further the intent of Proposition 57.

This identical argument was already considered and rejected by this court. (*T.D.*, *supra*, 38 Cal.App.5th at pp. 376–377, review granted.) The *T.D.* court determined the drafters' opinions were not relevant. Instead, we look for the electorate's intent. We cannot determine with any assurance whether the voters were aware of the drafters' intent. (*Id.* at p. 377.) Therefore, those prior changes to Proposition 57 which did not go before the electorate are inapplicable.

In conclusion, we hold Senate Bill 1391 constitutionally amended Proposition 57.[8] (See *B.M.*, *supra*, 40 Cal.App.5th at pp. 746–747, review granted; *Alexander C.*, *supra*, 34 Cal.App.5th at p. 997; *K.L.*, *supra*, 36 Cal.App.5th at pp. 540–541; *T.D.*, *supra*, 38 Cal.App.5th at p. 365, review granted; *I.R.*, *supra*, 38 Cal.App.5th at p. 386, review granted; *S.L.*, *supra*, 40 Cal.App.5th at p. 117, review granted; *Narith S.*, *supra*, 42 Cal.App.5th at p. 1133, review granted.) Accordingly, the district attorney's assertions are without merit, and we deny the present petition.[9]

DISPOSITION

The order to show cause previously issued is discharged, and the petition for writ of mandate is denied. The stay issued by this court on April 25, 2019, shall remain in effect until this opinion becomes final in all courts in this state or the California Supreme

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8 Because we conclude Senate Bill 1391 is consistent with and furthers the intent of Proposition 57, we need not address Rodriguez's assertion Senate Bill 1391 did not amend Proposition 57, but, rather, an older statute (Assem. Bill No. 560 (1993–1994 Reg. Sess.) Stats. 1994, ch. 453, § 9.5, p. 2523). (See *Alexander C.*, *supra*, 34 Cal.App.5th at p. 1003, fn. 1.) In any event, the Legislature expressly stated Senate Bill 1391 amended Proposition 57. (*S.L.*, *supra*, 40 Cal.App.5th at p. 119, review granted.)

9 Because we conclude Senate Bill 1391 constitutionally amended Proposition 57, we need not address the district attorney's alternative arguments the lower court relied on improper law and analysis to reach its decision. Instead, an appellate court may affirm a decision correct in law even if the stated reasons below were incorrect. (*People v. Nelson* (2012) 209 Cal.App.4th 698, 710; *Estate of Kampen* (2011) 201 Cal.App.4th 971, 1000.)

Court grants a hearing, whichever shall occur first. Thereafter, said order is vacated and said stay is dissolved.

LEVY, J.

I CONCUR:

HILL, P.J.

Poochigian, J., dissenting,

"The Legislature may not amend an initiative statute without subsequent voter approval unless the initiative permits such amendment, 'and then only upon whatever conditions the voters attached to the Legislature's amendatory powers.' [Citations.]" (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568 (*Pearson*).) To determine whether a statute amends an initiative, "we simply need to ask whether it prohibits what the initiative authorizes, or authorizes what the initiative prohibits." (*Id*. at p. 571.)

One of the intents behind the Public Safety and Rehabilitation Act of 2016 (Proposition 57) was to "require" that judges decide whether juveniles should be tried in adult court. It is undisputed that Proposition 57 was using the word "juveniles" in the ordinary sense, which would include 14- and 15-year-olds. In contrast, Senate Bill No. 1391 (Stats. 2018, ch. 1012, § 1 (S.B. 1391)) generally *prohibits* judges from making the exact same decisions as to 14- and 15-year olds that Proposition 57 sought to *require*. Not only does S.B. 1391 not "further" this express intent of Proposition 57, the two enactments are in outright conflict on the point.

The majority says that S.B. 1391 "merely narrowed" the class of juveniles whose jurisdictional fate is "required" to be decided by judges. But this is just another way of saying that S.B. 1391 prohibits some of (though not all of) what Proposition 57 required. The fact that S.B. 1391 leaves intact some of what Proposition 57 authorized, does not change the fact that it also "prohibits what the initiative authorizes ...." (*Pearson*, *supra*, 48 Cal.4th at p. 571.)

Proposition 57 was intended to require that judges make certain decisions, and S.B. 1391 prevents judges from making some of those very same decisions. Regardless of how we label that change – narrowing, amending, etc. – the fact remains that S.B. 1391 "prohibits" what Proposition 57 expressly intended to "authorize."

Judges across the state have recognized this undeniable conflict between the two enactments. The Second District has observed that Proposition 57 "authorizes the possibility of treating a 15-year-old … as an adult and … [S.B.] 1391 precludes this possibility." (*O.G. v. Superior Court* (2019) 40 Cal.App.5th 626, 630, review granted Nov. 26, 2019, S259011.) "[W]hereas Proposition 57 left in place the ability of the juvenile court to transfer certain 14- and 15-year-old juvenile offenders, Senate Bill No. 1391 all but eliminated the prosecutor's ability to even request such a transfer …." (*B.M. v. Superior Court* (2019) 40 Cal.App.5th 742, 761–762, dis. opn. of McKinster, Acting P.J., review granted Jan. 2, 2020, S259030.) "Proposition 57 ensured that a judge would determine whether qualifying juveniles should be tried in criminal court. After Senate Bill 1391, judges no longer have that authority. The Legislature has taken away from prosecutors and courts a power that the electorate had chosen to provide. [Citation.]" (*People v. Superior Court* (*S.L.*) (2019) 40 Cal.App.5th 114, 124 (dis. opn. of Grover, J.), review granted Nov. 26, 2019, S258432; see also *People v. Superior Court (I.R.)* (2019) 38 Cal.App.5th 383, 395–398 (dis. opn. of Poochigian, Acting P.J.), review granted Nov. 26, 2019; *People v. Superior Court* (*T.D.*) (2019) 38 Cal.App.5th 360, 378–382 (dis. opn. of Poochigian, Acting P.J.), review granted Nov. 26, 2019, S257980.)

Finally, I also part ways from the majority when it declares, "… Senate Bill 1391 does not reduce public safety." (Maj. opn., *ante*, at p. 11.) That is an open question, at best.

For these reasons, I respectfully dissent.

POOCHIGIAN, J.